

United States
²
Circuit Court of Appeals

For the Ninth Circuit.

SAN FRANCISCO & PORTLAND STEAMSHIP
COMPANY, a Corporation,

Appellant,

vs.

LEGGETT STEAMSHIP COMPANY, a Corpora-
tion,

Appellee,

Apostles on Appeal.

Upon Appeal from the Southern Division of the United States
District Court for the Northern District of California,
First Division.

Filed

APR 20 1917

F. D. Monckton,
Clerk.

United States
Circuit Court of Appeals
For the Ninth Circuit.

SAN FRANCISCO & PORTLAND STEAMSHIP
COMPANY, a Corporation,
Appellant,
vs.

LEGGETT STEAMSHIP COMPANY, a Corpora-
tion,
Appellee,

Apostles on Appeal.

Upon Appeal from the Southern Division of the United States
District Court for the Northern District of California,
First Division.

INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

	Page
Answer	11
Assignment of Errors	25
Certificate of Clerk U. S. District Court to Apostles on Appeal	32
Final Decree for Libelant	21
Interlocutory Decree for Libelant.....	18
Libel	6
Notice of Appeal	24
Praeceptum for Apostles on Appeal.....	1
Statement of Clerk U. S. District Court.....	2
Stipulation and Order Extending Time to and Including March 28, 1917, to File Record and Docket Cause	33
Stipulation and Order Extending Time to and Including April 6, 1917, to File Record and Docket Cause	35
Stipulation and Order with Reference to Original Exhibits	31
Stipulation as to Damages	20
Stipulation with Reference to Testimony, etc., Taken in Consolidated Causes	29

In the Southern Division of the United States District Court, for the Northern District of California, First Division.

IN ADMIRALTY—No. 15,675.

LEGGETT STEAMSHIP COMPANY, a Corporation,
Libelant,

vs.

SAN FRANCISCO & PORTLAND STEAMSHIP
COMPANY, a Corporation,
Respondent.

Praeceptum for Apostles on Appeal.

To the Clerk of the Above-entitled Court:

Please prepare transcript of record in this cause to be filed in the office of the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit upon the appeal heretofore perfected in this court, and include in said transcript the following pleadings, proceedings and papers on file, to wit:

(1) All those papers required by Section 1 of Paragraph 1 of Rule 4 of the Rules of Admiralty of the United States Circuit Court of Appeals for the Ninth Circuit;

(2) All the pleadings in said cause and all of the exhibits annexed thereto;

(3) The stipulation waiving reference and agreeing upon the amount of damages;

(4) The stipulation concerning the hearing of said cause by the United States Circuit Court of Appeals upon the testimony taken [1*] in case No.

*Page-number appearing at foot of page of original certified Transcript of Record.

2 *San Francisco & Portland S. S. Company*

15,513 of the records of the above-entitled court;

(5) The opinion and decision of the Court entered in the consolidated cases;

(6) The final decree and notice of appeal;

(7) The assignments of error.

IRA A. CAMPBELL,

McCUTCHEN, OLNEY & WILLARD,

Proctors for Respondent and Appellant.

Service of the within Praecipe for Apostles on Appeal and receipt of a copy is hereby admitted this 17th day of March, 1917.

W. S. BURNETT,

DENMAN & ARNOLD,

Proctors for Libelant.

[Endorsed]: Filed Mar. 17, 1917. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [2]

Statement of Clerk U. S. District Court.

In the Southern Division of the District Court of the United States, Northern District of California, First Division.

TITLE OF CAUSE.

No. 15,675.

LEGGETT STEAMSHIP COMPANY, a Corporation,

Libelant,

vs.

SAN FRANCISCO & PORTLAND STEAMSHIP COMPANY, a Corporation,

Respondent. [3]

PARTIES.

Libelant: Leggett Steamship Company, a corporation.

Respondent: San Francisco & Portland Steamship Company, a corp.

PROCTORS.

for

Libelant: William Denman, Esq., and Denman & Arnold.

Respondent: Ira A. Campbell, Esq., and McCutchen, Olney & Willard.

PROCEEDINGS.

1914.

July

21. Filed verified libel for damages, caused by collision, (\$2707.99).
22. Issued Citation for the appearance of the Respondent, San Francisco & Portland Steamship Company, a corp., which Citation was afterwards, on July 24th, 1914, returned and filed, with the following return of the U. S. Marshal endorsed thereon;

“I hereby certify and return that I served the annexed writ on the therein-named S. F. and Portland S. S. Co. at San Francisco, Calif., by handing [4] to and leaving a true and correct copy thereof with H. W. Deans, Assist. General Manager S. F. and Portland S. S. Co. personally, at San

San Francisco, Calif., in said District
on the 23d day of July, 1914.

J. B. HOLOHAN,
U. S. Marshal,
By C. B. Delancey,
Office Deputy."

September 22. Filed Answer of Respondent.

October 15. The Court, this day, made an order
that this cause be consolidated, for
trial, with the cause entitled San
Francisco & Portland Steamship
Co., a Corp., vs. Steam Schr. "Nec-
canicum," etc., No. 15,513.

The causes, as consolidated, this
day, came on for hearing, in the
District Court of the United
States, for the Northern District
of California, at San Francisco,
before the Honorable M. T.
DOOLING, Judge, and after
hearing duly had, the causes were
continued until October 16th, for
further hearing. Further hear-
ings were had on October 16th,
20th, 21st, and 22d, respectively,
on which last-mentioned day the
matters were ordered submitted,
in briefs to be filed.

20. Filed (in case No. 15,513), deposi-
tion of Theodore J. Hewitt, taken
on behalf of S. F. & Portland S. S.
Co., before John P. Hannon, a No-
tary Public, at Portland, Oregon.
[5]

October 21. Filed (in case No. 15,513), deposition of Alfred F. Pillsbury, taken on behalf of S. F. and Portland S. S. Co., before Francis Krull, U. S. Commissioner.

1915.

August 19. The causes, as heretofore consolidated, this day, came on for argument, and after argument duly had, the Court ordered the matters submitted.

December 10. The Court this day filed an opinion, in which it was ordered that the Libel in the cause, entitled, S. F. & Portland S. S. Co. vs. Steam Schooner "Necanicum," etc., No. 15,513, be dismissed; holding the "Beaver" (owned by the S. F. & Portland S. S. Co.) responsible for Collision, and referring this cause (No. 15,675) to U. S. Commissioner to ascertain and report damage sustained by the "Necanicum."

21. Filed Interlocutory Decree.

1916.

December 28. Filed Stipulation as to damages (\$2372.81, exclusive of interest and costs).

1917.

January 4. Filed Final Decree.

February 6. Filed Notice of Appeal.

7. Filed Bond on Appeal in the aggre-

I.

That libelant is a corporation organized and existing under the laws of the State of New Jersey, that at all times herein mentioned it was, and now is, the owner of the steam schooner "Necanicum."

II.

That respondent is a corporation duly organized and existing under and by virtue of the laws of the State of Utah, and is and was during all times herein mentioned the owner of the steamship "Beaver," an American vessel of 4507 tons gross register, whereof E. Mason late was and now is master.

III.

That heretofore, and on or about the 30th day of October, 1913, and just before the hour of two o'clock P. M., said steam schooner "Necanicum" was proceeding up along the coast of California, [7] between Point Reyes and Point Arena, and then and there sighted the steamer "Beaver," bearing on the "Necanicum's" starboard bow and distant several miles, coming down the coast on a course apparently parallel to that of the "Necanicum"; that shortly thereafter a fog settled down, entirely obscuring the steamship "Beaver" from the view of those on the steam schooner "Necanicum"; that the said "Necanicum" proceeded on her course at a moderate speed, and at all times herein mentioned had a proper lookout and competent officers on watch, and did at all times maintain such a lookout and a careful watch to determine the approach of other vessels, if any, in said fog; that thereafter, and at about the hour of two fifteen o'clock P. M., and while proceeding at a moderate rate of speed, the lookout and the

officers in charge of the "Necanicum" sighted the steamer "Beaver" proceeding through the fog at a very high rate of speed, to wit, fifteen knots or thereabouts, on a course apparently parallel to that of the "Necanicum," and bearing from the "Necanicum" well on her starboard bow, that the officer in charge of the "Necanicum" thereupon proceeded to starboard her helm and sounded two blasts of the steam whistle, thus announcing his intention of passing the "Beaver" on his starboard side; that thereupon the said "Beaver," still proceeding at a high rate of speed, instead of starboarding her helm to conform to said manoeuver, did port her helm and proceed on a course across the bows of the "Necanicum"; that thereupon the officer in charge of the "Necanicum" did at once put her helm hard aport and reverse her propeller at full speed and sound three blasts of her whistle, indicating that her engines were going astern full speed; that the speed of the "Necanicum" rapidly diminished until she stopped in the water and began to move astern, but the steamer "Beaver" continued to approach rapidly and struck the "Necanicum's" stem with her port side, twisting the "Necanicum's" bow and stem to port, smashing in her anchor on her port side, and inflicting [8] various grievous injuries upon her, that the said steamer "Beaver" continued on without stopping and shortly thereafter disappeared in the fog, at no time returning to the steam schooner "Necanicum" but deserting her in her injured condition; that thereafter the said schooner "Necanicum" did give up her said voyage and did put about and return to a port of refuge, to wit, the port of San Francisco.

IV.

That the hull of the said steam schooner “Necanicum” was damaged to the amount of Eighteen Hundred and Seven and 99/100 Dollars (\$1807.99), and that the time occupied in making the said port of refuge and in repairing the said injuries to the said vessel was nine (9) days, and that the reasonable value of said demurrage or delay of said vessel during said period and her costs of steaming to said port, is Nine Hundred Dollars (\$900), no part of which has been paid.

V.

That all and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

WHEREFORE, libelant prays that a monition in due form of law, according to the course of this Honorable Court in cases of admiralty and maritime jurisdiction, may issue against said San Francisco & Portland Steamship Company, and that it be cited to appear and answer upon oath all and singular the matters aforesaid, and that this Honorable Court decree payment of the damages aforesaid, with interest and costs, and that libelant may have such other and further relief as in law and justice it may be entitled to receive.

WILLIAM DENMAN,
DENMAN & ARNOLD,
Proctors for Libelant.

W. S. BURNETT,
Advocate. [9]

Answer.

To the Honorable M. T. DOOLING, Judge of the
United States District Court for the Northern
District of California:

The answer of San Francisco & Portland Steamship Company, a corporation, respondent herein, to the libel of the Leggett Steamship Company, a corporation, libellant herein, admits, denies and alleges, as follows:

I.

Respondent admits the allegations of Article I of said libel.

II.

Respondent admits the allegations of Article II of said libel. [11]

III.

Answering unto the allegations of Article III of said libel, respondent admits that heretofore, on or about the 30th day of October, 1913, and just before the hour of two o'clock P. M., said steam schooner "Necanicum" was proceeding up along the coast of California, between Point Reyes and Point Arena, but respondent is without knowledge as to whether or not said "Necanicum" then and there sighted the steamer "Beaver," and for that reason denies the same, and demands that strict proof of said allegation be made.

Respondent denies, however, that then and there, or at any other time, said "Necanicum" sighted the steamer "Beaver" bearing on the "Necanicum's" starboard bow several miles distant. It admits,

however, that said "Necanicum" may have sighted said "Beaver" several miles distant, and coming down the coast on a course apparently parallel to that of the "Necanicum." Respondent is without knowledge as to whether or not shortly after said "Necanicum" sighted said "Beaver" a fog settled down, entirely obscuring the steamer "Beaver" from the view of those on the "Necanicum," and for that reason denies the same, and demands that strict proof of same be made. Respondent denies that said "Necanicum" proceeded on her course at a moderate speed, and denies that at all times mentioned in said libel she had a proper lookout and competent officers on watch, and denies that she did, at all times, maintain such a lookout and a careful watch to determine the approach of other vessels, if any, in said alleged fog; denies that thereafter and at [12] about the hour of 2:15 o'clock P. M., or at any other time, and while proceeding at a moderate rate of speed, or under any other conditions, the lookout and the officer in charge of the "Necanicum," or any other persons whomsoever, sighted the steamer "Beaver" proceeding through the fog at a very high rate of speed, to wit, 15 knots, or thereabouts, on a course apparently parallel to that of the "Necanicum," and bearing from the "Necanicum" well on her starboard bow. Respondent denies that the officer in charge of the "Necanicum" thereupon proceeded to starboard her helm and sounded two blasts of the steam whistle, thus announcing his intention of passing the "Beaver" on the starboard side. Respondent denies that thereupon the said "Beaver," still pro-

ceeding at a high rate of speed, instead of starboarding her helm to conform to said manœuvre, did port her helm and proceeded on a course across the bows of said "Necanicum." Respondent further denies that thereupon the officer in charge of said "Necanicum" did at once put her helm hard a port and reverse her propeller at full speed and sound three blasts of her whistle, indicating that her engines were going astern full speed; further denies that the speed of the "Necanicum" rapidly diminished until she stopped in the water and began to move astern; further denies that the steamer "Beaver" continued to approach rapidly and struck the "Necanicum's" stem with her port side, twisting the "Necanicum's" bow and stem to port, smashing in her anchor on her port side, and inflicting various grievous injuries upon her; denies that said steamer "Beaver" continued on without stopping, and shortly thereafter disappeared in the fog; denies that she, at no time, returned [13] to the steam schooner "Necanicum," or that she deserted her in her injured condition. Respondent admits that, thereafter, said steam schooner "Necanicum" did give up her said voyage, and did put about and return to the port of San Francisco.

IV.

Answering unto the allegations of Article IV of said libel, respondent avers that it is without knowledge as to the truth or falsity of the same, and for that reason demands strict proof thereof, if the same be material.

V.

Answering unto the allegations of Article V of said libel, respondent denies that all and singular the premises are true, but admits that they are within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

Further answering unto said libel, respondent avers that said collision between said steam schooner "Necanicum" and said steamship "Beaver" occurred under the following circumstances and conditions, and not otherwise.

I.

That heretofore, on the 30th day of October, 1913, at about the hour of 2:18 P. M., said steamship "Beaver" was run into and seriously damaged by said steam schooner "Necanicum"; that prior to and at the time of said collision, said steamship "Beaver" was proceeding southward along the coast of California, between Point Arena and Point Reyes, on a course approximately south 50° east, and on or about the [14] hour of 2:14 P. M. the officers of said "Beaver" sighted said "Necanicum" ahead, from a mile to a mile and a half distant, bearing slightly on the "Beaver's" port bow, and proceeding northward on a course approximately parallel with that of said "Beaver"; that upon sighting said steam schooner "Necanicum," the master of said steamship "Beaver" blew a one blast passing whistle and altered her course to port; that no answer to said signal was received from said "Necanicum," and thereafter, approximately half a minute later, the master of said "Beaver" blew a second one blast passing

whistle, which whistle was answered by said "Necanicum" with a like signal, thereby consummating an agreement that said vessels were to pass on the port side of each other; that immediately after said passing signals had been exchanged, however, said "Necanicum" was observed by the officers of said "Beaver" not to be altering her course to starboard, as required by said signals, but swinging to port toward the course of said "Beaver"; that thereupon the engine of said "Beaver" was reversed full speed astern and here helm put hard aport, and, simultaneously therewith, the master of said "Beaver" gave three blasts of her whistle, indicating to said "Necanicum" that the engine of said "Beaver" was working full speed astern; that, in the meantime, without responding to said three blasts, said "Necanicum" continued to swing to port toward said "Beaver," and notwithstanding the reversing of said "Beaver's" engine and the hard a'porting of her helm, she was unable to avoid said collision, and said "Necanicum" struck said "Beaver" on the latter's port bow, at nearly right angles, approximately twelve feet abaft [15] her stem; that immediately thereafter said "Necanicum" backed away, and shortly became lost in the fog which afterward set in.

That from prior to said "Beaver" passing Point Arena the day was fair, and a light drifting fog at various short intervals prevailed, during all of which time the officers and lookout of said "Beaver" could see a distance of from not less than two to ten miles, and, during all of which times, as conditions re-

quired, the automatic fog signal of said "Beaver" was regularly blown, and a moderate speed maintained, as required by law.

II.

That at all of said times proper and competent officers were on watch and a proper and efficient lookout was maintained on said "Beaver"; that said collision was not caused by any fault or neglect in the navigation of said "Beaver," as required by the International Rules of Navigation, but was solely caused by the careless and negligent navigation of said "Necanicum" in that she did not have on watch proper and competent officers, and did not maintain a proper and efficient lookout, and did not alter her course to starboard so as to pass said "Beaver" to port, as required by said passing signals, and did not stop and reverse on receiving said signals from said "Beaver," and did not alter her course to starboard when danger of collision became imminent.

III.

That all and singular the premises are true, and within the admiralty and maritime jurisdiction of the United [16] States and of this Honorable Court.

WHEREFORE, respondent prays that the libel herein may be dismissed, and that it may have judgment for its costs and disbursements herein incurred, and for such other relief as it may be entitled to in law and in equity.

IRA A. CAMPBELL,
McCUTCHEN, OLNEY & WILLARD,

Proctors for Respondent. [17]

State of California,

City and County of San Francisco,—ss.

G. L. Blair, being first duly sworn, deposes and says: That he is an officer, to wit, general manager of San Francisco & Portland Steamship Company, above-named respondent; that he makes this verification for and on behalf of said respondent as such officer; that he has read the foregoing answer, knows the contents thereof, and that the same is true of his own knowledge, except as to the matters which are therein stated on his information or relief, and as to those matters that he believes it to be true.

G. L. BLAIR.

Subscribed and sworn to before me this 21st day of September, 1914.

[Seal]

FRANK L. OWEN,

Notary Public in and for the City and County of San Francisco, State of California.

Service of the within Answer and receipt of a copy is hereby admitted this 21st day of September, 1914.

W. S. BURNETT,

WILLIAM DENMAN,

DENMAN and ARNOLD,

Proctors for Libelant.

[Endorsed]: Filed Sep. 22, 1914. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [18]

*In the District Court of the United States, in and
for the Northern District of California.*

No. 15,675.

LEGGETT STEAMSHIP COMPANY, a Corpora-
tion,

Libelant,

vs.

SAN FRANCISCO AND PORTLAND STEAM-
SHIP COMPANY, a Corporation,

Respondent.

Interlocutory Decree for Libelant.

This cause having been heard on the merits on the proceedings and proofs, and having been argued and submitted by the advocates of the respective parties, and due liberation having been had, the Court now finds:

That the collision in the libel described was caused by the misconduct of the steamship "Beaver" in proceeding in the fog prior to and up to the time of the collision at an immoderate rate of speed, while the steamship "Necanicum" was proceeding at a moderate rate of speed for the conditions then prevailing;

That the evidence fails to establish that libelant or the said steamship "Necanicum," prior to and at the time of the collision alleged in the libel, did not have a proper and efficient lookout and proper and competent officers, or that she failed to alter her course or conduct herself in accordance with the pass-

ing rules or exchange of signals between her and the steamship "Beaver," on that she failed to stop and reserve at a proper time before said collision; and further finds

That the said libelant or the said steamship "Necanicum" was not guilty of any neglect, error, default or misconduct at the time of or prior to the said collision, and that the said collision was not in any way caused or contributed to by any act on the part of libelant or the said steamship "Necanicum." [19]

WHEREFORE it is ordered, adjudged and decreed that the libelant have a decree against the respondent, the San Francisco and Portland Steamship Company, for the injury arising to libelant from the said collision, with interest and costs, and that the matter be referred to Francis Krull, United States Commissioner, to hear and determine the amount of the said damages, and to report the same to this Court.

Dated December 21st, 1915.

M. T. DOOLING,
Judge.

[Endorsed]: Filed Dec. 21st, 1915. W. B. Maling, Clerk. By Lyle S. Morris, Deputy Clerk.

Entered in Vol. 6 Judg. and Decrees, at page 429.
[20]

*In the District Court of the United States, in and for
the Northern District of California, First Di-
vision.*

IN ADMIRALTY—No. 15,675.

LEGGETT STEAMSHIP COMPANY, a Corpora-
tion,

Libelant,

vs.

SAN FRANCISCO AND PORTLAND STEAM-
SHIP COMPANY, a Corporation,

Respondent.

Stipulation as to Damages.

WHEREAS, it has heretofore been decreed by the above-entitled court that the libelant herein have a decree against the respondent herein for the injury set forth in the libel herein, with interest, and that the matter be referred to Francis Krull, United States Commissioner, to hear and determine the amount of said damages and report the same to said court; and

WHEREAS the parties hereto have agreed upon the amount of damages;

NOW, THEREFORE, it is hereby stipulated, by and between the parties hereto that the damages suffered by said libelant arising from said injury amount to the sum of Two Thousand Three Hundred and seventy-two and 81/100 Dollars (\$2,372.81), exclusive of interest and costs; and that said reference to said master is hereby waived; and that said sum of Two Thousand Three Hundred and Seventy-

two and 81/100 (\$2,372.81) be deemed reported to said court by said master, pursuant to said decree.

Dated December 26, 1916.

DENMAN & ARNOLD,

Proctors for Libelant.

McCUTCHEN, OLNEY & WILLARD,

Proctors for Respondent.

[Endorsed]: Filed Dec. 28, 1916. W. B. Maling
Clerk. By C. W. Calbreath, Deputy Clerk. [21]

*In the District Court of the United States, in and for
the Northern District of California, First Divi-
sion.*

IN ADMIRALTY—No. 15,675.

LEGGETT STEAMSHIP COMPANY, a Corpora-
tion,

Libelant,

vs.

SAN FRANCISCO AND PORTLAND STEAM-
SHIP COMPANY, a Corporation,

Respondent.

Final Decree for Libelant.

This cause having heretofore been duly heard on the merits and an interlocutory decree for libelant having been entered therein, wherein certain findings have been made, upon which this decree is based, and

WHEREAS in said interlocutory decree the matter of the amount of damages was referred to Francis Krull, United States Commissioner, and

WHEREAS thereafter the said Francis Krull did

proceed abroad and is now beyond the jurisdiction of this Court; and

WHEREAS the parties hereto have stipulated as follows:

“WHEREAS it has heretofore been decreed by the above-entitled court that the libelant herein have a decree against the respondent herein for the injury set forth in the libel herein, with interest, and that the matter be referred to Francis Krull, United States Commissioner, to hear and determine the amount of said damages and report the same to said court; and

“WHEREAS the parties hereto have agreed upon the amount of damages;

“NOW, THEREFORE, it is hereby stipulated, by and between [22] the parties hereto that the damages suffered by said libelant arising from said injury amount to the sum of Two Thousand Three Hundred and Seventy-two and 81/100 Dollars (\$2,372.81), exclusive of interest and costs, and that said reference to said master is hereby waived; and that said sum of Two Thousand Three Hundred and Seventy-two and 81/100 Dollars (\$2,372.81) be deemed reported to said court by said master, pursuant to said decree.

Dated December 26, 1916.

DENMAN & ARNOLD,

Proctors for Libelant.

McCUTCHEON, OLNEY & WILLARD,

Proctors for Respondent.”

And WHEREAS interest is due upon the said damages from the said disaster to this date;

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that the respondent, San Francisco & Portland Steamship Company, a corporation, is indebted to and shall pay to libelant the sum of Two Thousand Eight Hundred and Twenty-four and 83/100 Dollars (\$2,824.83), and interest from the date of this decree at six (6) per cent per annum, and its costs in the sum of to be hereafter taxed and entered herein.

Dated January 2, 1917.

M. T. DOOLING,
Judge.

[Endorsed]: Filed Jan. 4, 1917. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk.

Entered in Vol. 7, Judg. and Decrees, at page 93.
[23]

In the Southern Division of the United States District Court, in and for the Northern District of California, First Division.

IN ADMIRALTY—No. 15,675.

LEGGETT STEAMSHIP COMPANY, a Corpora-
tion,

Libelant,

vs.

SAN FRANCISCO & PORTLAND STEAMSHIP
COMPANY, a Corporation,

Respondent.

Notice of Appeal.

To the Clerk of the Above-entitled Court, and to
Libelant in Said Cause, and to Messrs. Denman
& Arnold, Its Proctors:

YOU AND EACH OF YOU will please hereby
take notice that San Francisco & Portland Steamship
Company, a corporation, respondent in the above-
entitled action, hereby appeals from the final decree
made and entered in this cause on the 4th day of
January, 1917, to the next United States Circuit
Court of Appeals for the Ninth Circuit, to be holden
in and for said circuit at the city and county of San
Francisco, State of California.

Dated San Francisco, February 6th, 1917.

IRA A. CAMPBELL,

McCUTCHEN, OLNEY & WILLARD,

Proctors for Respondent. [24]

Service of the within Notice of Appeal and receipt
of a copy is hereby admitted this 6th day of Febru-
ary, 1917.

DENMAN & ARNOLD,

Proctors for Libelant.

[Endorsed]: Filed Feb. 6, 1917. W. B. Maling,
Clerk. By T. L. Baldwin, Deputy Clerk. [25]

*In the Southern Division of the United States Dis-
trict Court, for the Northern District of Cali-
fornia, First Division.*

IN ADMIRALTY—No. 15,675.

LEGGETT STEAMSHIP COMPANY, a Corpora-
tion,

Libelant,

vs.

SAN FRANCISCO & PORTLAND STEAMSHIP
COMPANY, a Corporation,

Respondent.

Assignment of Errors.

Comes now San Francisco & Portland Steamship Company, a corporation, respondent and appellant herein, and contends that in the record, opinion, decision and final decree in said cause there is manifest and material error, and said appellant now makes, files and presents the following assignment of errors on which it relies, to wit:

1. That the District Court erred in rendering the decree herein of date January 4, 1917, in favor of the above-named libelant and against said respondent.

2. That the District Court erred in not holding and deciding that, as at the time of the collision fog prevailed, the steamship "Necanicum" was in fault in proceeding at full speed or $8\frac{1}{4}$ knots per hour.

3. That the District Court erred in holding and deciding that the steamship "Necanicum" was proceeding at a moderate rate of speed for the condi-

tions prevailing at and prior to the time of the collision.

4. That the District Court erred in not holding and deciding that the steamship "Necanicum" had violated subdivision 1 of the article 16 of the International Rules of Navigation, in that she was proceeding at an immoderate rate of speed in the fog. [26]

5. That the District Court erred in not holding and deciding that prior to and at the time of the collision the steamship "Necanicum" did not have a proper and efficient lookout.

6. That the District Court erred in not holding and deciding that prior to and at the time of the collision the steamship "Necanicum" did not have proper and competent and efficient officers.

7. That the District Court erred in not holding and deciding that the steamship "Necanicum" failed to alter her course or conduct herself in accordance with the passing rules or exchange of signals between her and the steamship "Beaver."

8. That the District Court erred in not holding and deciding that the steamship "Necanicum" failed to stop and reverse at a proper time before the collision.

9. That the District Court erred in not holding and deciding that prior to said collision, and before the exchange of any passing signals, the steamships "Beaver" and "Necanicum" were approaching on the port side of each other.

10. That the District Court erred in not holding and deciding that the steamship "Beaver" gave a

one-blast passing whistle and that the said passing whistle was not answered by the steamship "Necanicum."

11. That the District Court erred in not holding and deciding that said collision was caused and contributed to by the negligence and unskillful navigation of the steamship "Necanicum," in that while approaching the steamship "Beaver" port to port said "Necanicum" answered a one-blast passing whistle, with a similar whistle and, contrary to said signal, altered her course to port.

12. That the District Court erred in not holding and deciding [27] that said collision was caused and contributed to by the negligent and unskillful navigation of the steamship "Necanicum" while approaching the steamship "Beaver" port to port, in altering her course to port towards the steamship "Beaver," instead of to starboard and away from her.

13. That the District Court erred in not holding and deciding that the steamship "Beaver" while approaching the steamship "Necanicum," port to port, was carefully and skillfully navigated, in that she gave said "Necanicum" a port passing whistle and thereupon altered her course to starboard, and, thereafter, upon seeing that said "Necanicum" was in disobedience of said signal, altering her course to port, reversed her engines full speed astern and blew three blasts of her whistle to indicate that her engines were working full speed astern.

14. That the District Court erred in not holding and deciding that said collision was caused and con-

tributed to by the failure of said steamship "Necanicum" to reverse under a port helm in time to avoid said collision and in not giving three blasts of her whistle to indicate such working of her engines.

15. That the District Court erred in holding and deciding that said collision was not in any way caused or contributed to by any negligence, error, default or misconduct of the steamship "Necanicum" and her claimant, the Leggett Steamship Company.

16. That the District Court erred in not holding and deciding that said collision was caused or contributed to by the negligence, error, default or misconduct of the steamship "Necanicum" and her claimant, the Leggett Steamship Company.

17. That the District Court erred in holding and deciding that the steamship "Beaver" was proceeding, prior to the collision, [28] at an immoderate rate of speed under the conditions then prevailing.

18. That the District Court erred in holding and deciding that said collision was caused by the misconduct of the said steamship "Beaver" in proceeding in the fog, prior to the collision, at an immoderate rate of speed.

19. That the District Court erred in not holding and deciding that the steamship "Beaver" was proceeding at a moderate rate of speed under the conditions prevailing at and prior to the time of the collision.

In order that the foregoing assignment of errors may be and appear of record, said appellant files and presents the same and prays that such disposition be made thereof as in accordance with the law and

the statutes of the United States in such cases made and provided; and said appellant prays a reversal of the decree herein, heretofor made and entered herein, in the above-entitled case and appealed from.

IRA A. CAMPBELL,

McCUTCHEN, OLNEY & WILLARD,

Proctors for Respondent and Appellant.

Service of the within Assignment of Errors and receipt of a copy is hereby admitted this 30th day of March, 1917.

DENMAN & ARNOLD,

Proctors for Libellant.

[Endorsed]: Filed Mar. 30, 1917. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [29]

In the Southern Division of the United States District Court, for the Northern District of California, First Division.

IN ADMIRALTY—No. 15,675.

LEGGETT STEAMSHIP COMPANY, a Corporation,

Libellant,

vs.

SAN FRANCISCO & PORTLAND STEAMSHIP
COMPANY, a Corporation,

Respondent.

**Stipulation With Reference to Testimony, etc.,
Taken in Consolidated Causes.**

IT IS HEREBY STIPULATED AND AGREED
that all testimony and all other proof adduced, in-

cluding the testimony taken at the trial, all depositions taken and admitted in evidence, and all exhibits introduced in said cause, or in the cause entitled in said court, as San Francisco & Portland Steamship Company, a corporation, Owner of the American S. S. "Beaver," Libelant, vs. The Steam Schooner "Necanicum," Her Engines, Boilers, Boats, Tackle, Apparel and Furniture, Respondent, Leggett Steamship Company, a Corporation, Claimant, and bearing No. 15,513, may be considered for all purposes as having been heard and considered in this cause, including the purpose of hearing and decision of this cause on appeal, and that said cause may be consolidated in the United States Circuit Court of Appeals with the said cause of San Francisco & Portland Steamship Company, a Corporation, Owner of the American S. S. "Beaver," Libelant, [30] vs. The Steam Schooner "Necanicum," Her Engines, Boilers, Boats, Tackle, Apparel and Furniture, Respondent, Leggett Steamship Company, a corporation, Claimant, No. 15,513, and heard and considered by said appellate court upon the record filed and perfected in said last mentioned cause.

Dated March 17, 1917.

W. S. BURNETT,
DENMAN & ARNOLD,
Proctors for Libelant.

IRA A. CAMPBELL,
McCUTCHEN, OLNEY & WILLARD,
Proctors for Respondent.

[Endorsed]: Filed Mar. 17, 1917. W. B. Maling
Clerk. By C. W. Calbreath, Deputy Clerk. [31]

In the Southern Division of the United States District Court, in and for the Northern District of California, First Division.

IN ADMIRALTY—No. 15,675.

LEGGETT STEAMSHIP COMPANY, a Corporation,
tion,

Libelant,

vs.

SAN FRANCISCO & PORTLAND STEAMSHIP
COMPANY, a Corporation,

Respondent.

Stipulation and Order with Reference to Original Exhibits.

IT IS HEREBY STIPULATED AND AGREED by and between the parties hereto that all of the exhibits introduced in the depositions taken before the Commissioner in the above-entitled case, and the exhibits introduced at the hearing before the above-entitled court, may be sent up to the United States Circuit Court of Appeals for the Ninth Circuit as original exhibits for the apostles on appeal and need not be printed in said court of appeals.

DENMAN & ARNOLD,

Proctors for Libelant.

IRA A. CAMPBELL,

McCUTCHEN, OLNEY & WILLARD,

Proctors for Respondent.

It is so ordered by the Court.

Dated April 3, 1917.

M. T. DOOLING,

Judge.

[Endorsed]: Filed Apr. 3, 1917. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [32]

**Certificate of Clerk U. S. District Court to Apostles
on Appeal.**

I, Walter B. Maling, Clerk of the District Court of the United States, for the Northern District of California, do hereby certify that the foregoing 32 pages, numbered from 1 to 32, inclusive, contain a full true, and correct transcript of certain records and proceedings, in the cause entitled Leggett Steamship Company, a Corp., Libellant, vs. The San Francisco & Portland Steamship Company, a Corp., Respondent, No. 15,675, as the same now remain on file and of record in this office, said transcript having been prepared pursuant to and in accordance with "Prae-cipe for Apostles on Appeal" (copy of which is embodied in this transcript), and the instructions of the attorneys for respondent and appellant herein.

I further certify that the cost for preparing and certifying the foregoing Apostles on Appeal is the sum of Fourteen Dollars and Twenty Cents (\$14.20), and that the same has been paid to me by the attorneys for appellants herein.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court, this 6th day of April, A. D. 1917.

[Seal]

WALTER B. MALING,

Clerk.

By C. W. Calbreath,

Deputy Clerk. [33]

[Endorsed]: No. 2970. United States Circuit Court of Appeals for the Ninth Circuit. San Francisco & Portland Steamship Company, a Corporation, Appellant, vs. Leggett Steamship Company, a Corporation, Appellee. Apostles on Appeal. Upon Appeal from the Southern Division of the United States District Court for the Northern District of California, First Division.

Filed April 6, 1917.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk

*In the United States Circuit Court of Appeals, for
the Ninth Circuit.*

No. —.

LEGGETT STEAMSHIP COMPANY, a Corporation,
Appellee,

Appellee,

vs.

SAN FRANCISCO & PORTLAND STEAMSHIP
COMPANY, a Corporation,

Appellant,

**Stipulation and Order Extending Time to and In-
cluding March 28, 1917, to File Record and
Docket Cause.**

IT IS HEREBY STIPULATED AND AGREED
by and between the respective parties hereto that

the time for printing the record and filing and docketing this cause on appeal in the United States Circuit Court of Appeals for the Ninth Circuit be, and the same is, hereby extended to and including the 28th day of March, 1917.

Dated March 8, 1917.

WILLIAM DENMAN,
DENMAN & ARNOLD,
Proctors for Appellee.

IRA A. CAMPBELL,
McCUTCHEN, OLNEY & WILLARD,
Proctors for Appellant.

It is so ordered.

Dated March 8, 1917.

WM. W. MORROW,
Circuit Judge.

[Endorsed]: United States Circuit Court of Appeals for the Ninth Circuit. Leggett Steamship Company, a Corporation, Appellee, vs. San Francisco & Portland Steamship Company, a Corporation, Appellant. Stipulation. Filed Mar. 8, 1917. F. D. Monckton, Clerk.

*In the United States Circuit Court of Appeals, for
the Ninth Circuit.*

LEGGETT STEAMSHIP COMPANY, a Corporation,
Appellee,

vs.

SAN FRANCISCO & PORTLAND STEAMSHIP
COMPANY, a Corporation,
Appellant,

Stipulation and Order Extending Time to and Including April 6, 1917, to File Record and Docket Cause.

IT IS HEREBY STIPULATED AND AGREED by and between the respective parties hereto that the time for printing the record and filing and docketing this cause on appeal in the United States Circuit Court of Appeals for the Ninth Circuit be, and the same is, hereby extended to and including the 6th day of April, 1917.

Dated March 28, 1917.

W. S. BURNETT,
DENMAN & ARNOLD,
Proctors for Appellee.

IRA A. CAMPBELL,
McCUTCHEN, OLNEY & WILLARD,
Proctors for Appellant.

It is so ordered.

Dated March 28, 1917.

WM. W. MORROW,
Circuit Judge.

[Endorsed]: United States Circuit Court of Appeals for the Ninth Circuit. Leggett Steamship Company, Appellee, vs. San Francisco & Portland Steamship Company, etc., Appellant. Stipulation and Order Under Rule 16 Enlarging Time to and Including Apr. 6, 1917, to File Record Thereof and to Docket Case. Filed Mar. 28, 1917. F. D. Monckton, Clerk.

No. 2970. United States Circuit Court of Appeals for the Ninth Circuit. San Francisco & Portland S. S. Co. vs. Leggett S. S. Co. Two Stipulations and Orders Under Rule 16 Enlarging Time to Apr. 6, 1917, to File Record Thereof and to Docket Case. Refiled Apr. 6, 1917. F. D. Monckton, Clerk.